

constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 11, 1983, by a viva-voce vote; passed the House on May 25, 1983, by a non-record vote.

Approved June 16, 1983.

Effective Sept. 1, 1983.

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## LICENSED DIETICIAN ACT

### CHAPTER 307 <sup>29</sup>

S. B. No. 671

#### AN ACT

relating to licensing and regulation of dietitians and to the membership, qualifications, and duties of the Texas State Board of Examiners of Dietitians and to the duties of the Texas Board of Health, and the Texas Department of Health; authorizing fees to meet expenses necessary to administer the Act; requiring an annual audit and certain reports; defining certain offenses and providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. SHORT TITLE. This Act may be cited as the Licensed Dietitian Act.

SECTION 2. DEFINITIONS. In this Act:

- (1) "Board of health" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health.
- (3) "Commissioner" means the commissioner of health.
- (4) "Board" means the Texas State Board of Examiners of Dietitians.
- (5) "Commission on Dietetic Registration" means the Commission on Dietetic Registration that is a member of the National Commission on Health Certifying Agencies.

29. Vernon's Ann Civ St art 4512h, §§ 1 to 19.

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(6) "Dietetics" means the professional discipline of applying and integrating scientific principles of nutrition under different health, social, cultural, physical, psychological, and economic conditions to the proper nourishment, care, and education of individuals or groups throughout the life cycle. The term includes without limitation the development, management, and provision of nutritional services.

(7) "Licensed dietitian" means a person licensed under this Act.

(8) "Provisional licensed dietitian" means a person provisionally licensed under this Act.

(9) "Degree" means a degree received from a college or university that was regionally accredited at the time the degree was conferred.

SECTION 3. BOARD; MEMBERSHIP. (a) The Texas State Board of Examiners of Dietitians is created.

(b) The board is composed of nine members. Three members must be members of the general public. Six members must be dietitians licensed under this Act.

(c) The governor with the advice and consent of the senate shall appoint the board members, who shall serve staggered terms of six years with two terms beginning September 1 of each odd-numbered year.

(d) The professional discipline of dietetics includes five primary areas of expertise: clinical, educational, management, consultation, and community. In making the six professional appointments to the board, the governor shall consider and attempt to accomplish a continuing balance of representation among these areas of expertise. Following the fourth anniversary date of the effective date of this Act, a licensee eligible for appointment as a professional board member must have been a licensed dietitian under this Act for at least three years before his appointment to the board.

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(e) A person is eligible for appointment as a public member if the person and the person's spouse:

(1) are not licensed by an occupational regulatory agency in the field of health care;

(2) are not employed by and do not participate in the management of an agency or business entity that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; and

(3) do not own, control, or have a direct or indirect interest in more than 10 percent of a business entity that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

(f) It is the intent of the legislature that the membership of the board reflect the historical and cultural diversity of the inhabitants of this state; therefore, appointments to the board should be made without discrimination based on race, creed, sex, religion, national origin, or geographical distribution of the appointees.

(g) A member or employee of the board may not be an officer, employee, or paid consultant of a trade association in the field of health care.

(h) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), in a health-related area may not serve as a member of the board or act as the general counsel to the board.

SECTION 4. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required for appointment to the board;

(2) does not maintain during service on the board the qualifications required for appointment to the board; or

(3) violates a prohibition established by this Act.

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(b) If a ground for removal of a member from the board exists, the board's actions taken during the existence of the ground for removal are valid.

SECTION 5. OFFICERS; MEETINGS; QUORUM; EXPENSES. (a) Not later than the 30th day after the day its new members are appointed by the governor, the board shall meet to elect a chairman and vice-chairman who shall hold office according to rules adopted by the board.

(b) The board shall hold at least two regular meetings each year as provided by rules adopted by the board. The rules may not be inconsistent with present rules of the department relating to meetings of boards.

(c) A majority of the members constitutes a quorum.

(d) Each member of the board is entitled to a per diem payment at the rate set by the legislature for state employees in the General Appropriations Act for each day that the member engages in the business of the board. A member is entitled to compensation for transportation expenses as provided by the General Appropriations Act. A board member may not receive a fixed salary for his services.

SECTION 6. POWERS AND DUTIES OF BOARD. (a) The board may adopt rules consistent with this Act. In adopting rules, the board shall consider the rules and procedures of the board of health and the department and shall adopt procedural rules not inconsistent with similar existing rules and procedures of the board of health or the department.

(b) The board shall:

(1) adopt and publish a code of ethics and adopt an official seal;

(2) establish the qualifications and fitness of applicants for licenses, renewal of licenses, and reciprocal licenses;

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(3) revoke, suspend, or deny a license, probate a license suspension, or reprimand a licensee for a violation of this Act, the code of ethics, or the rules of the board;

(4) spend funds necessary for the proper administration of its assigned duties;

(5) establish reasonable and necessary fees for the administration and implementation of this Act; and

(6) comply with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) The board may not adopt rules restricting competitive bidding or advertising by a person regulated by the board except to prohibit false, misleading, or deceptive practices. The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of his personal voice in an advertisement;

(3) relates to the size or duration of any advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

SECTION 7. ADMINISTRATIVE FUNCTIONS; PERSONNEL. (a) The basic personnel and necessary facilities that are required to administer this Act shall be the personnel and facilities of the department. The department personnel shall act as the agents of the board. If necessary to the administration or implementation of this Act, the department by agreement may secure and provide for compensation for services that it considers necessary and may employ and compensate within available appropriations professional

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consultants, technical assistants, and employees on a full-time or part-time basis.

(b) The commissioner shall designate an employee to serve as executive secretary of the board. The executive secretary must be an employee of the department. The executive secretary shall be the administrator of the licensing activities for the board. In addition to other duties prescribed by this Act and by the department, the executive secretary shall:

(1) keep full and accurate minutes of the transactions and proceedings of the board;

(2) be the custodian of the files and records of the board;

(3) prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this Act, including rules and proposals on administrative procedures consistent with this Act;

(4) exercise general supervision over persons employed by the department in the administration of this Act;

(5) be responsible for the investigation of complaints and for the presentation of formal complaints;

(6) attend all meetings of the board as a nonvoting participant; and

(7) handle the correspondence of the board and obtain, assemble, or prepare the reports and information that the board may direct or authorize.

SECTION 8. FEES; FUNDS; ANNUAL REPORT; AUDIT. (a) After consultation with the commissioner or the department, the board shall set the fees imposed by this Act in amounts that are adequate to collect sufficient revenue to meet the expenses necessary to administer this Act without accumulating an unnecessary surplus in the Licensed Dietitian Act fund created by this section.

(b) The department shall receive and account for funds derived under this Act. The funds shall be deposited in the State Treasury to the credit of a special fund to be known as the

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Licensed Dietitian Act fund to be used only for the administration of this Act.

(c) Not later than January 1 each year, the department shall make a written report to the governor, lieutenant governor, and speaker of the house of representatives accounting for all funds received and disbursed by the board or the department for the administration of this Act during the preceding year.

(d) During each fiscal year, the State Auditor shall audit the financial transactions of the board or the department in relation to the administration of this Act.

SECTION 9. APPLICANT QUALIFICATIONS; APPLICATION REVIEW. (a) An applicant for a dietitian license must submit a sworn application, accompanied by the application fee.

(b) The board shall prescribe the form of the application and may by rule establish dates by which applications and fees must be received. These rules must not be inconsistent with present rules of the department related to application dates of other licenses.

(c) To qualify for the licensing examination under this Act, the applicant must:

(1) possess a baccalaureate or postbaccalaureate degree with a major course of study in human nutrition, food and nutrition, dietetics, or food systems management or an equivalent major course of study approved by the board; and

(2) have completed an internship or preplanned professional experience program approved by the board.

(d) Not later than the 45th day after the receipt of a properly submitted and timely application and not later than the 30th day before the next examination date, the department shall notify an applicant in writing that his application and any other relevant evidence pertaining to applicant qualifications established by the board by rule has been received and investigated. The notice shall state whether the application and

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other evidence submitted have qualified the applicant for examination. If the applicant has not qualified for examination, the notice shall state the reasons for the lack of qualification.

SECTION 10. EXAMINATION. (a) To qualify for a license under this Act, an applicant must pass a competency examination. Examinations shall be prepared or approved by the board and administered to qualified applicants at least twice each calendar year.

(b) An examination prescribed by the board may be or may include an examination given by the Commission on Dietetic Registration or by a national or state testing service in lieu of an examination prepared by the board.

(c) Not later than the 30th day after the day on which a licensing examination is administered under this Act, the department shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national or state testing service, the department shall notify examinees of the results of the examination within two weeks after the day the department receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the department shall notify the examinee of the reason for the delay before the 90th day.

(d) If requested in writing by a person who fails the licensing examination, the department shall furnish the person with an analysis of the person's performance on the examination.

(e) If an applicant fails the examination three times, the applicant must furnish evidence to the board of completed course work taken for credit with a passing grade in the areas of weakness before the applicant may again apply for examination.

SECTION 11. LICENSE. (a) A person who meets the licensing qualifications under this Act is entitled to receive a license certificate as a licensed dietitian.

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(b) The licensee must:

(1) display the license certificate in an appropriate and public manner; and

(2) keep the department informed of his current address.

(c) A license certificate issued by the board is the property of the board and must be surrendered on demand.

SECTION 12. LICENSE EXPIRATION; RENEWAL. (a) A license is valid for one year from the date it is issued and may be renewed annually.

(b) The board of health by rule may adopt a system under which licenses expire on various dates during the year.

(c) A person may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license.

(d) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the department the required renewal fee and a penalty fee that is one-half of the renewal fee.

(e) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the department all unpaid renewal fees and a penalty fee that is equal to the renewal fee.

(f) If a person's license has been expired two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the current requirements and procedures for obtaining a license.

(g) The department shall notify each licensee in writing of the license expiration date at least 30 days before that date and shall obtain from the licensee a signed receipt confirming receipt of notification.

SECTION 13. PROVISIONAL LICENSE. (a) A license to use the title of provisional licensed dietitian may be issued by the board on the filing of an application, payment of an application fee, and

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the submission of evidence of the successful completion of the educational requirement under Section 9 of this Act. The initial application shall be signed by the supervising licensed dietitian

(b) A provisional licensed dietitian shall be under the supervision and direction of a licensed dietitian.

(c) A person qualified for a provisional license under this Act is entitled to receive a license certificate as a provisional licensed dietitian. A provisional licensed dietitian must comply with Subsections (b) and (c) of Section 11 of this Act.

(d) A provisional license is valid for one year from the date it is issued and may be renewed annually by the same procedures established for renewal under Section 12 of this Act if the application for renewal is signed by the supervising licensed dietitian.

SECTION 14. RECIPROCITY. On receipt of an application and application fee, the board shall waive the examination requirement for an applicant who, at the time of application:

(1) is registered by the Commission on Dietetic Registration as a registered dietitian; or

(2) holds a valid license or certificate as a licensed or registered dietitian issued by another state with which this state has a reciprocity agreement.

SECTION 15. PROHIBITED ACTS; PENALTY. (a) A person may not use the title or represent or imply that he has the title of "licensed dietitian" or "provisional licensed dietitian" or use the letters "LD" or "PLD" and may not use any facsimile of those titles in any manner to indicate or imply that the person is a licensed dietitian or provisional licensed dietitian, unless the person holds an appropriate license issued under this Act.

(b) A person may not use the title or represent or imply that he has the title of "registered dietitian" or the letters "RD" and may not use any facsimile of the title in any manner to indicate or imply that the person is registered as a registered

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dietitian by the Commission on Dietetic Registration, unless the person is registered as a registered dietitian by the Commission on Dietetic Registration.

(c) A person commits an offense if the person knowingly or intentionally violates Subsection (a) or (b) of this section. An offense under this section is a Class B misdemeanor.

SECTION 16. COMPLAINT FILE AND STATUS. (a) The department shall keep an information file about each complaint filed with the board related to a licensee.

(b) If a written complaint is filed with the board relating to a licensee, the department, at least as frequently as quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition of the complaint.

SECTION 17. REVOCATION AND SUSPENSION; EX PARTE COMMUNICATION. (a) The board shall revoke or suspend a license, probate a license suspension, or reprimand a licensee on proof of:

- (1) any violation of this Act; or
- (2) any violation of a rule or code of ethics adopted by the

board.

(b) If the board proposes to suspend or revoke a person's license, the person is entitled to a hearing before the board.

(c) Proceedings for the suspension or revocation of a license are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) A member or employee of the board or an employee of the department who carries out the functions of the board may not communicate directly or indirectly with a party to a proceeding pending before the board or with the party's representative, unless notice and an opportunity to participate are given to each party to the proceeding if the member or employee proposes to make a decision, a finding of fact, or a conclusion of law in the proceeding.

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SECTION 18. DUTIES OF BOARD OF HEALTH. For the purpose of implementing this Act, the board of health:

(1) shall request and receive any necessary assistance of state educational institutions or other state agencies;

(2) shall prepare information of consumer interest describing the regulatory functions of the board, the procedures by which consumer complaints are filed and resolved, and the profession of dietetics;

(3) shall prepare a registry of licensed dietitians and provisional licensed dietitians and make this information available to the general public, licensees, and appropriate state agencies; and

(4) may request the attorney general or the appropriate county or district attorney to institute a suit to enjoin a violation of this Act in addition to any other action, proceeding, or remedy authorized by law.

SECTION 19. APPLICATION OF SUNSET ACT. The board is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the board is abolished effective September 1, 1993.

SECTION 20.<sup>30</sup> INITIAL BOARD APPOINTMENTS. (a) In making the initial appointments to the board, the governor shall designate three members, including one public member, for terms expiring September 1, 1989, three members, including one public member, for terms expiring September 1, 1987, and three members, including one public member, for terms expiring September 1, 1985.

(b) In making the initial six professional appointments to the board, the governor shall appoint six persons otherwise qualified under this Act who also have been for 60 months immediately preceding their appointment and who presently are registered as registered dietitians by the Commission on Dietetic Registration.

30. Vernon's Ann.Civ.St. art. 4512h note.

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SECTION 21.<sup>30</sup> INITIAL LICENSING PERIOD. For one year beginning on the effective date of this Act, the board shall waive the examination requirement under this Act and grant a license under this Act to any person who:

(1) is registered by the Commission on Dietetic Registration as a registered dietitian on the effective date of this Act or who becomes so registered before the one year anniversary of the effective date of this Act; or

(2) possesses a baccalaureate or postbaccalaureate degree, has satisfactorily completed appropriate academic requirements in the field of human nutrition, food and nutrition, dietetics, or food systems management or a directly related field approved by the board, and either has satisfactorily completed an internship or preplanned professional experience program of not less than six months approved by the board or has been employed in the field of dietetics for three of the 10 years immediately preceding the effective date of this Act.

SECTION 22. EFFECTIVE DATE. This Act takes effect September 1, 1983.

SECTION 23. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 12, 1983, by a viva-voce vote; Senate concurred in House amendments on May 27, 1983, by a viva-voce vote; passed the House, with amendments, on May 25, 1983, by a non-record vote.

Approved June 16, 1983.

Effective Sept. 1, 1983.

30. Vernon's Ann Civ St art 4512h note

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